THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.27878 OF 1996

ORAL ORDER:

This writ petition is filed seeking a declaration that the notice of attachment issued in Form No.5 under the provisions of the Andhra Pradesh Revenue Recovery Act, 1864 (for short "the Act"), seeking to attach agricultural lands bearing Sy.Nos.41A, 42A, 42B, 46B, 47B, 33A, 50A, 52A and 53A, situated at Anthakpet village of Husnabad mandal, Karimnagar district as arbitrary and illegal.

The impugned sale notice was issued in the name of one Sidduri Rajeswara Rao for recovery of a sum of Rs.69,405.50 ps awarded as compensation under the provisions of the Workmen's Compensation Act, by the Assistant Commissioner of Labour by Award dated 3.5.1994. Alleging that the said Sidduri Rajeswara Rao committed default in payment of the amount covered by the said Award, the lands in question are sought to be attached invoking the provisions of the Act.

The petitioner herein is the son of the said Sidduri Rajeswara Rao. He along with his mother claimed title and possession in respect of the land in question, and contended that the respondents are not entitled to proceed against the same invoking the provisions of the Act.

In the counter affidavit filed on behalf of the Mandal Revenue Officer, Husnabad, the fact that Sidduri Rajeswara Rao, who committed default in payment of the amount awarded by the Assistant Commissioner of Labour, is not the owner of the land in question has not been disputed. It is also admitted that the land actually belongs to his wife. However, it is contended that Sidduri Rajeswara Rao has been staying with his father-in-law as an Illatom son-in-law and that he has been looking after the agricultural operations of the land belonging to his wife. It is also contended that Sidduri Rajeswara Rao is not having any property in his name and, therefore, the respondents are constrained to proceed against the land in question, which stands in

the name of his wife.

A bare perusal of Section 5 of the Act shows that whenever revenue is in arrears, the Collector is empowered to proceed to recover the arrears by the sale of moveable and immoveable property belonging to the defaulter. Since, admittedly, the properties in question belong to the wife of the defaulter, I find force in the submission of the learned counsel for the petitioner that the respondents have no power to attach the said property for the purpose of recovery of arrears due from the defaulter. Even assuming that the defaulter has no other property, it is for the respondents to work out appropriate common law remedy for recovery of the amounts allegedly due, but it is not open to them to invoke the provisions of the Act against the property, which admittedly, does not belong to the defaulter.

Accordingly, the impugned sale notice, which is without jurisdiction is hereby set aside and the writ petition is allowed. No costs.

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(G. ROHINI).

24th January, 2006.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.27878 OF 1996

24th January, 2007.

Between:

Ch. Veera Rao. .. Petitioner.

And

The Mandal Revenue Officer, M.R.O.
Office, Husnabad, Karimnagar District and another. ..
Respondents.